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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,410	12/05/2001	Kurt D. Sparks	37217.8116	4495
7590	01/22/2004			EXAMINER
SHEMWELL AND GREGORY 4880 STEVENS CREEK BLVD., STE. 201 SAN JOSE, CA 95129			HO, UYEN T	
			ART UNIT	PAPER NUMBER
			3731	11
DATE MAILED: 01/22/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b><i>Office Action Summary</i></b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/010,410	SPARKS ET AL.
	<b>Examiner</b> (Jackie) Tan-Uyen T. Ho	<b>Art Unit</b> 3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 05 December 2001.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-4 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-4 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a)  The translation of the foreign language provisional application has been received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_ .  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7,8,9,10 . 6)  Other: \_\_\_\_ .

## DETAILED ACTION

### ***Information Disclosure Statement***

1. The information disclosure statements (IDS) submitted on 9/9/2002 and 9/23/2003 have been considered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Winston et al. (5,951,482). Winston discloses a method and catheter system for crossing a chronic occlusion in vasculature wherein the method comprising the steps of entering the vessel lumen, determining an orientation of the vessel lumen, physically securing tissue and establishing and forming a path through the occlusion, as claimed and wherein the catheter system comprises means for forming a track, means for determining an orientation, means for physically securing tissue and means for forming a path, as claimed (see col. 4 to col. 9).

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4. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Yock et al. (5,029,588). Yock et al. disclose a catheter system and method for crossing an occlusion in vasculature, wherein the method comprising the steps of entering the vessel lumen, determining an orientation of the vessel lumen, physically securing tissue and establishing and forming a path through the occlusion, as claimed and wherein the catheter system comprises means for forming a track, means for determining an orientation, means for physically securing tissue and means for forming a path, as claimed (see col. 4, line 55 to col. 9).

5. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Snow et al. (6,299,622). Snow et al. disclose a catheter system and method for crossing an occlusion in vasculature, wherein the method comprising the steps of entering the vessel lumen, determining an orientation of the vessel lumen, physically securing tissue and establishing and forming a path through the occlusion, as claimed and wherein the catheter system comprises means for forming a track, means for determining an orientation, means for physically securing tissue and means for forming a path, as claimed (see col. 4, to col. 8).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to (Jackie) Tan-Uyen T. Ho whose telephone number is (703) 306-3421. The examiner can normally be reached on MULTIFLEX Mon. to Sat..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703) 308-2496. The fax phone

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number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

*tanuyenho*

(Jackie) Tan-Uyen T. Ho  
Patent Examiner  
Art Unit 3731  
January 20, 2004